IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 715 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA :

HONOURABLE MR.JUSTICE KS JHAVERI :

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge

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PRATAPBHAI MORABHAI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
THROUGH JAIL for Appellant(s) : 1,MR PK SHUKLA for Appellant(s) : 1,
MR HL JANI APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 08/08/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE KS JHAVERI)

1.0 This appeal is directed against the judgment and order dated 15th March, 2005 passed by the learned Addl. Sessions Judge, Court No. 7, Ahmedabad in Sessions Case No. 164 of 2004 whereby, the appellant was convicted for the offence punishable u/s. 302 of the Indian Penal Code, 1860 [for short, “the I.P.C.”] and sentenced to undergo imprisonment for life with fine of Rs.30,000/- [Rupees Thirty thousand only] and in default of payment of fine, rigorous imprisonment for a further period of two years. Out of the said amount of fine, an amount of Rs.25,000/- was ordered to be paid to the parents of the deceased by way of compensation.

2.0 The facts in brief as brought out by the prosecution are as under;

2.1 On 09.12.2003, at around 1400 hrs., the appellant along with the deceased, who was his ex-wife, arrived at a Hotel situated in the Shah Alam area of Ahmedabad City. At the time of checking-in, the appellant showed his inability to make entry in the Hotel Register on the ground of illiteracy and, therefore, as per his instructions, the names were recorded as “Prakash K. Patel” and “Nisha P. Patel” respectively in the Hotel Register. They were

allotted Room No. 107 by the Manager of the Hotel. Thereafter, at around 1500 hrs., the appellant left the said Hotel. When the Cleaner of the Hotel entered the said room under the presumption that the couple had already left, he noticed that the deceased was lying dead on the bed in a badly bruised condition. He immediately reported about the same to the Manager of the Hotel who, in turn, telephonically informed about the said incident to Kagdapith Police Station.

2.2 In pursuance of that the police authority of Kagdapith Police Station reached the scene of offence and a complaint of the Manager of the Hotel was recorded which was sent for registration and the same was registered as I – C.R. No. 496 of 2003 for offences punishable u/s. 302 of I.P.C. and Section 135(1) of the Bombay Police Act. Inquest 'Panchnama' was drawn in the presence of 'Panchas'. 'Marrnottar' form was filled-up and necessary arrangements were made for the purpose of sending the dead body for post-mortem examination.

2.3 Further investigation was carried out and statements of

several witnesses were recorded. The appellant was arrested and sent to judicial custody. At the time of arrest, 'Panchnama' to that effect was drawn in the presence of 'Panchas' and the clothes which were worn by the accused at the time of commission of the alleged offence were also seized. The clothes worn by the deceased were also seized by way of a separate 'Panchnama'. Other 'muddammal' articles from the scene of offence were also seized. All the aforesaid articles were then sent to F.S.L. along with a forwarding letter. After receipt of the F.S.L. Report, PM Note and the Medical Report, they were kept along with the investigation papers.

2.4 On completion of the investigation, charge-sheet was filed against the appellant before the Court of learned Metropolitan Magistrate, Ahmedabad and since the case was exclusively triable by the Court of Sessions, the same was committed to the City Civil & Sessions Court, Ahmedabad, which was numbered as Sessions Case No. 164 of 2004. The appellant pleaded not guilty to the said charge and, therefore, trial was conducted.

2.5 The prosecution has examined in all thirteen witnesses in order to prove the guilt against the appellant. PW – 1 Mohanbhai Kutuppa Dodhmani at Exhibit – 6, PW – 2 Ravi Dattaram Chauhan at Exhibit – 7, PW – 3 Girishbhai Khemabhai Panchal at Exhibit – 21, PW – 4 Satishbhai Bhikhabhai Jadhav at Exhibit – 23, PW – 5 Dr. Sumanlal Bholanath Shrimali at Exhibit – 26, PW – 6 Motiben Halabhai at Exhibit – 29, PW – 7 Alabhai Motibhai at Exhibit – 37, PW – 8 Pravinbhai Valjibhai at Exhibit – 38, PW – 9 Ismailbhai Iqbalbhai at Exhbit – 39, PW – 10 Manjibhai Bhikhabhai Mandli at Exhibit – 43, PW – 11 Dr. Nitin J. Dave at Exhibit – 47, PW – 12 Gambhirsinh Samantsinh at Exhibit – 49 and PW – 13 Vasantbhai Laljibhai Solanki at Exhibit – 53.

2.6 The prosecution has also relied upon several documentary evidences and, more particularly, the evidences in the form of depositions of the parents of the deceased, employees of the Hotel in question, the Post-mortem Report, the F.S.L. Report and the past history between the appellant and the deceased.

2.7 On submission of the closing ‘purshis’ at Exhibit – 72,

the further statement of the appellant was recorded u/s. 313 of the Code of Criminal Procedure, 1973. After hearing learned counsel for the respective parties, the learned Addl. Sessions Judge passed the impugned judgment and order and convicted the appellant for the offence as narrated in the earlier part of this judgment. Hence, the present appeal.

3.0 When the matter came up for admission hearing, Mr. P. K. Shukla learned Advocate for the appellant requested that he would like to go through the Records & Proceedings available with the Court. Therefore, with a view to protect the interest of the appellant, the matter was adjourned so as to enable learned Advocate for the appellant to go through the Records & Proceedings. Ultimately, the matter was finally heard today.

4.0 Mr. P.K. Shukla learned Advocate appearing on behalf of the appellant has submitted that there is no direct evidence on record to connect the appellant with the crime in question and that the entire case rests upon circumstantial evidence. He has submitted that the appellant has been involved in the alleged

offence only on the basis of the fact that the deceased was his ex-wife and that a criminal case was pending between them.

4.1 Learned Advocate has contented that even if it is presumed that the appellant was involved in the alleged offence in question, then also his presence at the scene of offence is not proved. He has submitted that when the Waiter of the Hotel himself has stated before the police authority that all the entries in the Hotel Register were made by him only, then by no stretch of imagination, it could be said that the appellant was the person who had accompanied the deceased to the Hotel, more particularly, when the actual names of both the appellant and the deceased do not match with the names entered in the Hotel Register.

4.2 Learned Advocate has further contented that it is a matter of record that the appellant and the deceased had mutually divorced on 19.06.2003 and that a criminal case was pending between the same parties. Therefore, there is no reason as to why an ex-wife would go with an ex-husband to a Hotel room and that to by wrongfully entering the names in the Hotel records. In view of

the aforesaid circumstances, it is highly unbelievable that the appellant had committed the alleged offence in question. Hence, the impugned judgment and order passed by the Court below deserves to be quashed and set aside and the appellant deserves to be acquitted from the alleged offence in question.

5.0 We have heard learned counsel for the appellant and perused the entire oral as well as documentary evidences which have been shown to us by the learned counsel for the appellant. Before proceeding further, it would be worthwhile to high-light certain facts which, in our opinion, shall have considerable bearing on the final outcome of this appeal. From the record, it appears that the appellant and the deceased had performed a registered marriage against the wish and will of their parents. However, some time later, they started living separately as disputes used to occur between them at regular intervals. Some where in the month of June 2003, the appellant attempted to kill the deceased by setting her ablaze after sprinkling kerosene and, therefore, the deceased left her matrimonial home and stayed along with the family of her elder sister for around ten days and later returned to her parental

home. For the said incident, the deceased had also filed a complaint [Exhibit – 50] against the appellant with Dani Limda Police Station on 16.06.2003.

6.0 From the record itself, we could have a look at the conduct of the appellant which speaks of volumes about his ill-designs and ill-intentions. The appellant, even after getting mutually separated by a decree of divorce, continued to visit the deceased at her residential house and also used to harass her mentally as well as physically. On one occasion, the appellant had also inflicted several blows on the body of the deceased by a blade for which the father of the deceased lodged a complaint before Kagdapith Police Station which was registered as I – C.R. No. 221 of 2003. For the said incident, the deceased had to be admitted at V. S. Hospital in Ahmedabad. Necessary investigation was carried out on the said complaint and on completion of the investigation, charge-sheet was filed against the appellant and the case was numbered as Sessions Case No. 147 of 2003 before the City Civil & Sessions Court at Ahmedabad.

6.1 From the above, it could be said that the relationship between the appellant and the deceased as spouses had remained very strained and that even after getting separated with mutual consent, the appellant continued to visit the place of residence of the deceased frequently and also used to harass her physically as well as mentally.

7.0 Coming to the facts of the present case, it is an undisputed fact that there is no direct evidence on record to connect the appellant with the crime in question and that the entire prosecution case rests upon circumstantial evidence. The law regarding the same has been dealt with by the Court below in detail and, therefore, we are not discussing the same in this appeal. Thus, in order to convict the appellant for the alleged offence in question, this Court has to be satisfied that the prosecution has succeeded in establishing the complete link of circumstances which would make the appellant guilty of the alleged offence in question. In other words, no circumstance should be such which may point to the innocence of the appellant to the remotest possible extent.

8.0 The prosecution has examined the Manager of the Hotel - the complainant, as PW – 1 at Exhibit – 6. The said witness has deposed that on 19.12.2003, at around 1315 hrs., a man and a woman, who had named themselves as “Prakash K. Patel” and “Nisha P. Patel” respectively, i.e. the appellant and the deceased, arrived at the Hotel and requested for the allotment of a room for a couple of days. He has deposed that at the time of their arrival in the Hotel, the said couple were in a very happy state of mind. Thereafter, on asking said “Prakash K. Patel” to enter the necessary details in the Hotel Register, he informed that he could not write and, therefore, the Waiter of the Hotel, PW – 3, who was present at the Counter at the relevant point of time, made the entries in the Hotel Register, on behalf of said “Prakash K. Patel”, i.e. the appellant herein. They were allotted Room No. 107 and, thereafter, PW – 3 handed over the Towel, Soap, Drinking Water etc. to them.

8.1 At around 1455 hrs., said “Prakash K. Patel” came downstairs and when he enquired as to where he was going, at

that time, said “Prakash K. Patel” informed that he was going out to purchase Cigarettes. Thereafter, PW – 4, who was discharging his duties as a Cleaner in the Hotel, went to the said room allotted to the couple under the presumption that the couple had already vacated the room. However, when PW – 4 entered the room, he noticed the dead-body of the deceased lying on the bed in a badly bruised condition. Therefore, PW – 4 came downstairs and informed the other persons, including PW – 1, about the scene which he had noticed in the room. Therefore, he along with other staff of the Hotel, went to the said room and they all noticed the deceased lying dead on the bed in a badly bruised condition. Later, he telephonically informed Kagdapith Police Station about the said incident. Nothing contrary has come out from the evidence led by this witness which may lead us to believe his evidence to be untrue.

9.0 The evidence led by PW – 1 is duly supported by the deposition of PW – 3 who was working as Waiter in the said Hotel at the relevant point of time. He has categorically deposed that on 19.12.2003, a couple, who had named themselves as “Prakash K.

Patel" and "Nisha P. Patel" respectively, arrived at the Hotel. He has further deposed that since said "Prakash K. Patel" informed that he did not know to write, he had entered the necessary details in the Hotel Register and said "Prakash K. Patel" had only put his signature in the Register. Later, they were allotted Room No. 107 in the Hotel.

10.0 The evidence led by these two witnesses i.e. PW – 1 & PW – 3 support each other on all material aspects viz. the presence of said "Prakash K. Patel" and "Nisha P. Patel", i.e. the appellant and the deceased respectively in the said Hotel on 19.12.2003, the allotment of Room No. 107 to them, the appellant leaving the Hotel at around 1500 hrs., their noticing the dead-body of the deceased in the Hotel room in a badly bruised condition and it differs only on the aspect of executor of the signature in the Hotel Register. In our opinion, when the depositions of these two witnesses support each other on all material aspects, then the non-matching of the deposition with respect to the executor of the signature in the Hotel Register shall not have any bearing on the merits of the case on looking to the entire evidence on record. Both

these witnesses have identified the appellant as the person who had accompanied the deceased in the Hotel on 19.12.2003 in the Test Identification Parade conducted after about 4 or 5 days from the date of incident. The 'Panchnama' has been proved by the evidence of the Executive Magistrate who has been examined as PW – 10 at Exhibit – 43. Nothing contrary has come out from the depositions of these witnesses which may shake their evidence. Thus, it could be concluded that the prosecution has proved the presence of the appellant along with the deceased in the Hotel on the day of the incident.

11.0 It is an admitted fact that there is not an iota of evidence as to under what circumstances the ex-spouses, who had been divorced in June 2003, had chosen to go to the Hotel in question. Be that as it may, it is established from the record and, more particularly from the evidences of PW – 1 & PW – 3, that the appellant and deceased arrived together in the Hotel and stayed together in Room No. 107 for around two hours and, thereafter, the appellant left the Hotel at around 1500 hrs.. The ill-intentions of the appellant can be seen from the fact that he had chosen not to

make any entry in the Hotel Register by himself and also of giving false details with respect to their names, age and address and also of his conduct of increasing the volume of the Television kept in the room allotted to them to the maximum level in order to ensure that the shouts of the deceased are not heard outside at the time of committing the offence.

11.1 Keeping the aforesaid facts and the past history between the ex-spouses in mind, it could be believed that the appellant might have persuaded / lured the deceased to accompany him to the Hotel on the ground of a re-union, a possibility which could not be completely ruled out since there appears to be no other reason as to why the deceased would accompany the appellant to a Hotel room, more particularly, when a Sessions Case was already pending between them at the relevant point of time.

12.0 The prosecution case also gets support from the Report of the Forensic Science Laboratory. The clothes worn by the deceased as well as by the accused at the relevant point of time

were seized by way of separate 'Panchnamas'. 'Muddammal' articles were also collected from the scene of offence. All the said items were sent to the F.S.L. for examination. From the Report of the F.S.L., the presence of semen of the accused on the clothes of the deceased is established, which further proves the presence of the accused at the scene of offence. The medical report of the deceased also show the presence of semen of the appellant in the private part of the deceased. Blood and semen were also found on the inner wear of the accused as well. Pieces of bangles found from near the dead-body of the deceased and which were seized by way of a 'Panchnama' were found to be the one worn by the deceased as the same were matched physically. Thus, the F.S.L. Report fully supports the case of the prosecution.

13.0 The medical evidence on record supports the report of the F.S.L. The Post-mortem Report is at Exhibit – 27. In order to prove the PM note, the prosecution has examined the Doctor, who has conducted the post-mortem of the dead body of the deceased at Exhibit – 26. Nothing incriminating has come out from the evidence on this witness which may lead us to believe his evidence

to be untrue. Hence, we are of the opinion that the evidence in the form of the PM note fully corroborates the case of the prosecution in a strong way and completes the entire chain of circumstances. Thus, we have no hesitation in our mind to hold that the deceased died a homicidal death. The Inquest 'Panchnama' at Exhibit – 57 also supports the aspect of homicidal death.

14.0 So far as the aspect of motive is concerned, in the presence case, the prosecution has proved the same without any doubt, which is reflected from the evidence vide Exhibits – 50 & 51 and also from the evidence of the parents of the deceased.

15.0 Considering the facts and circumstances of the case and the evidence discussed hereinabove, we are of the considered opinion that the prosecution has succeeded in establishing the involvement of the appellant in the crime in question. We are in complete agreement with the reasonings given by and the findings arrived at by the Court below and, hence, find no reasons to interfere in this appeal.

16.0 In the result, the appeal is dismissed. The Court below is directed to hand over the amount of Rs.25,000/- [Rupees Twenty five thousand only], if deposited by the appellant towards fine, to the parents of the deceased by Account Payee cheque after proper identification.

[R. P. Dholakia, J.] [K. S. Jhaveri, J.]

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